

APPEAL NO. 020908
FILED MAY 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 21, 2002. The issues were:

1. Does the commission [Texas Workers' Compensation Commission] have jurisdiction over the issues of 1) whether the compensable injury extends to the thoracic spine, the cervical spine, post-traumatic stress disorder [PTSD], vertigo and radiculopathies; and 2) whether the claimant [appellant] is entitled to lifetime income benefits [LIBs]?
2. Did the claimant suffer injuries to the thoracic spine, the cervical spine, [PTSD], vertigo and radiculopathies in addition to the compensable lumbar injury on _____?
3. Is the claimant entitled to LIBS as a result of the _____ compensable injury?

The hearing officer determined that the Commission lacks jurisdiction over the alleged additional injuries; that the Commission has jurisdiction over whether the claimant is entitled to LIBs after June 13, 1995; and that the claimant is not entitled to LIBs.

The claimant appeals the hearing officer's decision on a number of grounds. The respondent (carrier) responds in general, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable lumbar spine injury on _____. A CCH was held on April 21, 1993, to determine maximum medical improvement and impairment rating (IR). The hearing officer in that case (hearing officer 1), in determining the IR, adopted the report of the designated doctor who only rated the lumbar spine and had excluded a neck and vertigo condition. That case was appealed and the Appeals Panel affirmed the hearing officer's decision in Texas Workers' Compensation Commission Appeal No. 93539, decided August 12, 1993. The claimant appealed that decision to a District Court where it apparently was dismissed on a motion for summary judgment.

Another CCH was held on January 27, 1995 (with the record closing on June 8, 1995), where some of the disputed issues were:

1. Does the Commission have jurisdiction to address whether the Claimant's nervous disorder, [PTSD], neck-stress vertebrae, cervical spine injury, positional vertigo are a result of the compensable injury sustained on or about _____?
2. Are the Claimant's nervous disorder, [PTSD], neck-stress vertebrae, cervical spine injury, and positional vertigo a result of the compensable injury sustained on or about _____?

* * * *

4. What is the extent of the Claimant's injury of _____?

* * * *

6. Is the Claimant entitled to [LIBs] for the injury of _____?

Another hearing officer (hearing officer 2) determined that the Commission does not have jurisdiction to address the conditions in issue 1 because final administrative action had been taken (the action was pending in District Court), and that the claimant was not entitled to LIBs. The hearing officer's decision was appealed and the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 951111, decided August 23, 1995 (Unpublished), affirmed the hearing officer's decision, commenting:

Although the extent of injury issue (Issue No. 4) was also litigated at the first CCH, reviewed by the Appeals Panel and is now subject to judicial review, the hearing officer decided this issue on the evidence presented rather than dismissing it based on the principles or [sic] *res judicata* or lack of jurisdiction. We affirm this determination based on *res judicata* and lack of jurisdiction under Section 410.207. See Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, for the proposition that the Appeals Panel will affirm a decision of a hearing officer on any theory reasonably supported by the evidence.

The claimant appealed this decision to the District Court, where it is either still pending or has been dismissed based on a motion for summary judgment.

Whether the compensable lumbar spine injury extends to the thoracic spine, cervical spine, PTSD, vertigo, and radiculopathies and whether the claimant is entitled to LIBs, at least until June 8, 1995, has been previously considered, if not by hearing officer 1, then at least by hearing officer 2, and in Appeal No. 951111, *supra*. Based on the evidence presented, we consider those matters to be *res judicata*, as dismissed in Appeal No. 951111, and we decline to reconsider them now.

As for entitlement to LIBs, hearing officer 2 only decided the LIBs issue through the time the record closed in Appeal No. 951111, consequently the hearing officer in this case considered, and we review, the record for entitlement to LIBs after June 8, 1995. (The hearing officer in this case uses the date of June 13, 1995.) The claimant bases his contention for entitlement to LIBs on the fact that he has been declared 100% disabled by the Social Security Administration and that he has a 30 or 35-pound lifting restriction. No new evidence regarding LIBs of a deteriorating condition since June 1995 was presented. As noted in Appeal No. 951111, criteria for eligibility for LIBs are set out in Section 408.161 which includes the total and permanent loss of both feet at or above the ankle (Section 408.161(a)(2)) and "an injury to the spine which results in permanent and complete paralysis of . . . both legs . . ." (Section 408.161(a)(5)). The claimant contends that the hearing officer should have addressed Section 408.161(b) which states: "For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part." There is no evidence that the claimant has lost both of his legs or both feet at or above the ankle. The claimant offers no current medical evidence to support his position after June 1995. Medical evidence indicates intermittent back pain and the claimant's testimony was that he is able to walk, drive, and can ambulate without a wheelchair or other assistance. We hold that the hearing officer's determination that the claimant is not entitled to LIBs after June 13, 1995, to be supported by the evidence and that the hearing officer did not err in making his determinations.

Much, if not most, of the claimant's lengthy appeal deals with matters far outside of the disputed issues in this case and our jurisdiction to address those matters (such as the District Court violated the claimant's Civil Rights). Attached to the claimant's appeal is a timely addendum which includes a medical report dated September 7, 2000, which the claimant asks to have admitted as Claimant's Exhibit No. 158. The report gives the claimant's diagnosis and states that he is unable to obtain or "maintain" "gainful employment." This exhibit is not admitted and was not considered. We do not normally consider evidence offered for the first time on appeal and the claimant has not demonstrated how this report resulted in an erroneous decision by the hearing officer. Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE-HALL CORPORATION SYSTEM, INCORPORATED
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Roy L. Warren
Appeals Judge